

WHEN RECORDED RETURN TO:

City of Tempe
31 E. Fifth Street
Tempe, AZ 85281
Attn: City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR EQUIPMENT FOR CENTRAL ALL HAZARDS INCIDENT
MANAGEMENT TEAM
BETWEEN THE CITY OF TEMPE
AND
THE CITY OF PHOENIX**

This Intergovernmental Agreement ("Agreement") is made and entered into this _____ day of _____ 2012, ("Effective Date"), by and between the City of Phoenix ("Phoenix"), a municipal corporation duly organized under the laws of the State of Arizona, and the City of Tempe ("Tempe"), a municipal corporation duly organized and existing under the laws of the State of Arizona. The entities are referred to jointly herein as "Parties" and individually as "Party." This Agreement constitutes the entire understanding and agreement of the Parties.

RECITALS

A. Arizona Revised Statutes ("A.R.S."), § 11-951 through § 11-954, provide that public agencies may enter into intergovernmental agreements for the provisions of services or for joint and cooperative action.

B. Tempe is empowered by Tempe City Charter Section 1.03 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Tempe.

C. There are 26 cities in Maricopa County, also known as the Central Region, that are collaborating to develop, equip, and train three All Hazards Incident Management Teams ("AHIMT") at the Type III level. The purpose of the AHIMT is to provide Incident Command Support during major emergency incidents and special events of significance for any community within the Central Region and Statewide as needed. The cities of Phoenix, Phoenix, and Tempe, due to their geographical locations, have agreed to host the necessary equipment for their respective AHIMT, Westside, Central, and Eastside.

D. Tempe purchased miscellaneous equipment including numerous laptop computers, associated equipment, printers, generators, portable office equipment, two

hook-lift type trucks, and two hook-lift type containers as a part of this program. The invoices for all of the equipment purchased by Tempe on behalf of the AHIMT, along with the costs associated with the purchase of this equipment ("Equipment") are attached hereto as ***Exhibit A***.

E. The Equipment was purchased with the use of funds secured from both the 2009 and 2010 State Homeland Security Grant Program ("SHSGP") under grants 09-AZDOHS-HSGP-555214-01 and 10-AZDOHS-HSGP-777214-01 and with the understanding of the Department of Homeland Security and Tempe that a portion of the equipment purchased would be provided to the cities of Phoenix and Glendale for their respective fire departments to use as a part of maintaining their respective Central and Westside AHIMT response programs.

F. The Parties desire to enter into this Agreement with the understanding that this is the entire Agreement and with the understanding that each Party bears the sole and complete responsibility for the equipment they receive pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, Tempe and Phoenix hereby mutually agree as follows:

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the Parties with respect to the distribution by Tempe, through the Tempe Fire Department, of certain Equipment obtained by Tempe.

2. **Equipment.**

A. Responsibility for and Use of Equipment. A portion of the Equipment listed in ***Exhibit A*** with an approximate value of \$72,340 was transferred to the care, custody and control of the Phoenix Fire Department for the use of the Central AHIMT. Tempe maintains no control over said equipment and once the equipment has been transferred to the Phoenix Fire Department, any responsibility for said Equipment will be solely that of Phoenix. Phoenix agrees to be responsible for the maintenance and upkeep, including being responsible for the costs associated with any repairs or replacement, of the Equipment and will deal directly with the manufacturer of said Equipment in relation to any repairs, maintenance, replacements, and/or calibrations of said Equipment subject to any of the terms set forth herein. Phoenix acknowledges and agrees that Tempe will not be responsible for any maintenance or replacement of, repairs to or calibrating any of the Equipment nor will Phoenix seek reimbursement for any related costs from Tempe.

The use of the Equipment set forth herein shall be in accordance with the terms and conditions set forth in the agreement entered into by Tempe with the Department of Homeland Security, a copy of which is attached hereto as ***Exhibit B***. Phoenix agrees to comply with all of the conditions set forth in that agreement.

- B. Equipment Inspection. Phoenix agrees to make the Equipment set forth herein available for equipment monitoring and auditing by state and/or federal authorized representatives of the State and/or Federal Departments of Homeland Security. The parties agree and understand that Tempe will not retake possession of the Equipment for any said monitoring and auditing nor will Tempe or any of its employees, agents, departments or any other representative of Tempe be responsible for, or held liable for, conducting any monitoring, auditing or any inspections of any kind of the Equipment transferred to Phoenix.
 - C. Disposition of Equipment. Should Phoenix determine that it no longer needs said Equipment or wants to discontinue use of said Equipment, Phoenix shall follow the mandates set forth in ***Exhibit B*** and request in writing disposition instruction from the Arizona Department of Homeland Security before actual disposition of the property. Any theft, destruction or loss of the Equipment shall also be reported directly to the Arizona Department of Homeland Security pursuant to the terms of ***Exhibit B***.
 - D. Notice to Tempe. Phoenix recognizes that the Tempe Fire Department is keeping a master list of the Equipment distributed to all cities solely for tracking purposes. Phoenix agrees to notify the Tempe Fire Department of any theft, destruction or loss of the Equipment set forth herein.
- 3. **Payment**. Phoenix is not required to pay Tempe for the Equipment received by Phoenix under the terms of this Agreement. Rather, Tempe has been reimbursed for the cost of the Equipment by a grant secured from the Department of Homeland Security.
 - 4. **Transactional Conflict of Interest**. All parties hereto acknowledge that this Agreement is subject to cancellation by the Parties pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
 - 5. **Indemnification**.
 - A. Indemnification. Phoenix agrees to indemnify, defend, save and hold harmless Tempe, its departments, agencies, boards, commissions, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") for, from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as

“Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the use of the Equipment transferred hereunder, unless such Claims were solely caused by Tempe’s negligence or intentional conduct. This would include any claims related to the failure of the Equipment to perform properly.

- B. Survival. This section shall survive termination, cancellation, or revocation whether whole or in part, of this Agreement for a period of one (1) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. § 12-821.01, in which case this paragraph shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this paragraph survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.
6. **Warranties and/or Guarantees.** The Parties understand that Tempe has not, will not, and is not required to, perform any independent testing of the Equipment provided to Phoenix under the terms of this Agreement and Tempe in no way provides any warranties or guarantees as to the Equipment provided herein. Any warranties or guarantees that may attach to said Equipment are limited to those warranties or guarantees provided by the manufacturer of the Equipment to the purchaser of the Equipment.
7. **Interpretation of Agreement.**
- A. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
 - B. Amendment. This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both Parties.
 - C. Construction and Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the Parties as expressed in the recitals contained herein.
 - D. Waiver. No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the Party to be bound thereby.
 - E. Relationship of the Parties. Neither Party shall be deemed to be an employee or agent of the other Party to this Agreement.

- F. Days. Days shall mean calendar days.
- G. Severability. In the event that any provisions of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of this Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the Parties agree to meet promptly upon request of the other Party in an attempt to reach an agreement on a substitute provision.
8. **Authority.** Tempe and Phoenix each represent, warrant and covenant to the other that they have the right to enter into and make this Agreement.
9. **Notices.** Any notice, consent or other communication or modification (“Notice”) required or permitted under this Agreement shall be in writing and shall be given by registered or certified mail or in person to the following individuals. The date of receipt of such notices shall be the date the Notice shall be deemed to have been given.

For the City of Phoenix: Phoenix Fire Department
150 S. 12th Street
Phoenix, AZ 85034

Attn: Kevin Roche, Assistant to the Fire Chief

With a copy to:
City Attorney
City of Phoenix

For the City of Tempe: Tempe City Fire Department
Special Operations Deputy Chief
P.O. Box 5002
Tempe, Arizona 85280-5002

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement on the dates indicated below.

CITY OF PHOENIX a
municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

CITY OF TEMPE, a
municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

APPROVAL OF ATTORNEY

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of the CITY OF PHOENIX and (ii) as to the City of Phoenix only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

City Attorney

Date

APPROVAL OF CITY ATTORNEY

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of the CITY OF TEMPE and (ii) as to the City of Tempe only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

City Attorney

Date

Exhibit A

INVOICES FOR EQUIPMENT PURCHASED BY CITY OF TEMPE
UTILIZING GRANT MONEY FOR THE AHIMT

Exhibit B

ARIZONE DHS SUBGRANTEE AGREEMENT

09-AZDOHS-HSGP-555214-01

10-AZDOHS-HSGP-777214-01